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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 In the Matter Of:

11 THE COMPLAINT OF DAVID BELL
12 AND GERRI JACKSON-BELL,

13 Petitioners

IN ADMIRALTY

CASE NO. C12-1126JLR

ORDER GRANTING IN PART
MOTION FOR SUMMARY
JUDGMENT

14 Before the court are cross-motions for summary judgment brought by Petitioners
15 David Bell and Gerri Jackson-Bell (“the Bells”) (Bell MSJ (Dkt. # 28)) and Claimants the
16 Port of Edmonds and Enduris (Port MSJ (Dkt. # 34)) (collectively referred to along with
17 claimant Ace Insurance Company as “Claimants”). This is an admiralty case. The Bells’
18 private boat, the SEA FOR TWO, caught fire on New Year’s Eve of 2011. It was docked
19 at the Port of Edmonds. The parties dispute whether the Bells should be held liable for
20 damages that resulted from the fire. (*See* Compl. (Dkt. # 1).) Claimants argue that the
21 Bells should be liable because they were negligent and because their boat was not
22 seaworthy. (*See* Port MSJ; Ace Resp. (Dkt. # 40).) In response, the Bells argue that they

1 are permitted to limit their liability under the Shipowners' Limitation of Liability Act, 46
2 U.S.C. § 30505, an Act of Congress passed in 1851 ("the Act"). (See Bell MSJ.) Both
3 sides ask the court for summary judgment. The court has examined the record, the
4 submissions of the parties, and the relevant law. Considering itself fully advised,¹ the
5 court GRANTS IN PART² and DENIES IN PART the Bells' motion and DENIES the
6 Port's motion.

7 I. INTRODUCTION

8 This is a "limitation of liability" action brought pursuant to a law passed over 160
9 years ago: the Shipowners' Limitation of Liability Act of 1851, 46 U.S.C. § 30505. (See
10 Compl.) That act, which is little-used today,³ has been described as "a relic of the clipper
11 ship era in which it was launched," Craig H. Allen, *The Future of Maritime Law in the*

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13 ¹ No party has requested oral argument pursuant to the Local Rules of the Western
14 District of Washington. See Local Rule W.D. Wash. CR 7(b)(4). The general rule is that the
15 court may not deny a request for oral argument made by a party opposing a motion for summary
16 judgment unless the motion is denied. *Dredge Corp. v. Penny*, 338 F.2d 456, 462 (9th Cir.
1964). Federal Rule of Civil Procedure 56, however, does not require a hearing where the
opposing party does not request it. See, e.g., *Demarest v. United States*, 718 F.2d 964, 968 (9th
Cir. 1983). The court therefore determines that these motions are appropriate for decision
without oral argument.

17 ² Two claims remain after this motion for summary judgment. First, Claimants have
18 asserted a post-fire contractual claim related to the salvage and storage of the SEA FOR TWO.
(See Answer (Dkt. # 12) at 3; Port MSJ at 18.) The Bells do not address this claim in their
19 filings, other than to acknowledge that the issue remains even if summary judgment is granted on
all other issues. (Bell Resp. (Dkt. # 42) at 30.) Second, as discussed below, the court denies
summary judgment with respect to one of Claimants' theories of negligence.

20 ³ For example, between 1953 and 1996, only 166 limitation of liability cases were
21 pursued to judgment in federal courts—an average of less than four per year. Craig H. Allen,
22 *The Future of Maritime Law in the Federal Courts: A Faculty Colloquium*, 31 J. MAR. L. &
COM. 263, 263 (2000) (citing The MLA Report, MLA Doc. No. 729 (May 2, 1997), at 10487,
10527-36).

1 *Federal Courts: A Faculty Colloquium*, 31 J. MAR. L. & COM. 263, 263 (2000), and “an
2 ‘anachronism, a principle which should be relegated to the era of wooden hulls,’” Mark
3 A. White, *The 1851 Shipowners’ Limitation of Liability Act: Should the Courts Deliver*
4 *the Final Blow?*, 24 N. ILL. U. L. REV. 821 (2004) (quoting Carter T. Gunn, *Limitation of*
5 *Liability: United States and Convention Jurisdictions*, 8 Mar. 29, 29 (1983)). Despite its
6 old age, the Act is still the law of the land. *See, e.g., In re Mission Bay Jet Sports, LLC*,
7 570 F.3d 1124 (9th Cir. 2009) (applying the Act in 2009); *see generally* Allen, *The*
8 *Future of Maritime Law*, 31 J. MAR. L. & COM. 263.

9 The Act’s provisions are straightforward. The Act places a cap on the liability of a
10 vessel owner for damages caused by the vessel—specifically, the vessel owner is not
11 liable for amounts greater than the value of the vessel itself plus its freight:

12 (a) **In General.**—Except as provided in section 30506 of this title, the
13 liability of the owner of a vessel for any claim, debt, or liability described
14 in subsection (b) shall not exceed the value of the vessel and pending
15 freight.

16 46 U.S.C. § 30505(a). The act covers, and caps liability for, a wide range of damages as
17 long as those damages are “done, occasioned, or incurred, without the privity or
18 knowledge of the owner.” *See* 46 U.S.C. § 30505(b). The general idea of the liability
19 cap is to encourage investment in maritime ventures by limiting the possibility that a
20 single shipwreck or other marine catastrophe will drive an investor into financial ruin.
21 White, *The 1851 Shipowners’ Limitation of Liability Act*, 24 N. ILL. U. L. REV. at 824.

22 The Act has a long and colorful history that sheds a helpful light on its purpose
and operation today. *See generally id.* The idea of limited liability for vessel owners

1 | dates back many years; scholars speculate that it was part of Roman law and was perhaps
2 | codified in the Amalphitan Tablets during the eleventh century. *See id.* (citing James J.
3 | Donovan, *The Origins and Development of Limitation of Shipowners' Liability*, 53 TUL.
4 | L. REV. 999, 1000-01 (1979); Dennis J. Stone, *The Limitation of Liability Act: Time to*
5 | *Abandon Ship?*, 32 J. MAR. L. & COM. 317, 318-19 (2001)). The concept spread
6 | throughout Europe as continental commerce developed and, by the Middle Ages, was
7 | embedded in the laws of most shipping nations of the Mediterranean. *Id.* The concept
8 | was adopted in Germany by “the Hanseatic Ordinances of 1614 and 1644,” and France
9 | by the Louis XIV in the “French Marine Ordinance of 1681,” both of which, like the Act,
10 | limit the liability of a vessel owner to the value of the ship. *Id.* at 825 (citing 2 PETERS,
11 | ADMIRALTY DECISIONS IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
12 | PENNSYLVANIA DISTRICT (1807)). The English caught up with continental Europe in
13 | 1734, codifying limited liability after public outrage over a case in which a ship owner
14 | was held liable for the theft of a huge amount of bullion by the ship’s captain. *Id.* at 825-
15 | 26 (citing 95 Eng. Rep. 53 (K.B. 1734); LORD CHARLES TENTERDEN, A TREATISE OF THE
16 | LAW RELATIVE TO LAW OF MERCHANT SHIPS AND SEAMAN, 163 (1901); *The Main v.*
17 | *Williams*, 152 U.S. 122, 128 (1894)). The English law was different from many in
18 | continental Europe in that, like the Act, it conditioned limited liability on the vessel
19 | owner’s lack of privity or knowledge. *See id.* at 826.

20 | The limited liability concept came to America in 1851, its passage sparked by
21 | several notorious maritime tragedies. *See id.* at 826-27. American shipowners were
22 | already feeling disadvantaged relative to their European competitors, and the issue came

1 to a head after a steamboat called the Lexington sank in the Long Island Sound, its cargo
2 of cotton bales catching fire after being stowed too close to the ship's chimney. *Id.* at
3 827-28 (citing *The Lexington*, 47 U.S. (6 How.) 344 (1848)). Shipowners were outraged
4 when the Lexington's owner was held liable for the deaths of 146 passengers in addition
5 to the loss of a chest filled with gold and silver coins worth \$18,000.00.⁴ *Id.* Outrage
6 also ensued after the case of *The Henry Clay*, in which a shipowner was held liable for a
7 fire that occurred at a wharf despite no proof of actual fault or negligence. *Id.* at 828
8 (citing *Wright v. Norwich & N.Y. Transp. Co.*, 30 F. Cas. 685, 687 (C.C.D. Conn. 1870)).
9 In response to this outrage, Congress passed the Act in 1851 "for the express purpose of
10 aiding the fledgling American merchant marine by attempting to put it on par with its
11 British competition, whose shipping had been protected by limitation laws for over a
12 century." *Id.* The Act passed with no debate in the House of Representatives and less
13 than a day of debate in the Senate despite concerns about its "poor draftsmanship" that in
14 subsequent years have proven to be prescient. *Id.* at 829-30 (citing CONG. GLOBE, 31st
15 Cong., 2d Sess. 334-35 (1851)).

16 Little about the Act has changed since its passage, either by judicial interpretation
17 or legislative amendment. The Act languished in disuse during the Civil War and
18 Reconstruction eras, and was not graced with its first interpretation by the Supreme Court
19 until 1866. *See id.* at 831-32 (citing Joseph C. Sweeney, *Limitation of Shipowner*
20 *Liability: Its American Roots and Some Problems*, 32 J. MAR. L. & COM. 241, 283

21
22 ⁴ Roughly \$471,000.00 in today's dollars.

(2001)). In that first case, which again involved a ship sinking in the Long Island Sound (this time after a collision with another ship), the Supreme Court held that a vessel owner's liability is limited to the value of the ship after, not before, the damage-causing incident. *See id.* at 832 (citing *Norwich & N.Y. Transp. Co. v. Wright (The City of Norwich)*, 80 U.S. (13 Wall.) 104 (1872)). Thus, if the ship sinks and is a total loss, liability is capped at zero. *See id.* This concept is illustrated in dramatic fashion by the case of the Torrey Canyon, in which an oil tanker carrying 119,328 tons of crude oil became stranded off the Southwest coast of England, leaking vast amounts of oil into the English Channel. *Id.* at 832-33. (citing *In re Barracuda Tanker Corp. (The Torrey Canyon)*, 281 F. Supp. 228 (S.D.N.Y. 1968)). Eventually, the Royal Air Force was called in to bomb and sink the ship. *Id.* at 833. The ship's owner, Barracuda Tanker Corp., used the Act to successfully limit its liability to \$50.00—the value of a single lifeboat salvaged from the wreck. *Id.* This occurred in 1968, and the law applied in that case is the same law that would be applied today. On the legislative side, amendments have excluded claims for seaman's wages from the liability cap and provided for expanded liability if an accident results in injury or death. *Id.* at 833-35 (citing Act of June 26, 1884, ch. 121, 23 Stat. 53). The latter amendment came about after the passenger cruise-liner Morro Castle burned within sight of the New Jersey coastline, taking 134 lives but only resulting in shipowner liability of \$20,000.00.⁵ *Id.* at 834 (citing Alan F. Schoedel, MARITIME LIABILITY: ISSUES FOR THE NEW CONGRESS, 11

⁵ Roughly \$335,000.00 in today's dollars.

1 Mar. 105, 106 (1986); Morro Castle (Settlement) 1939 A.M.C. 895 (S.D.N.Y. 1939)).

2 Apart from these amendments, the law operates today much as it did when it was passed
3 in 1851. *Id.* at 835; *see generally* Allen, *The Future of Maritime Law in the Federal*
4 *Courts*, 31 J. MAR. L. & COM. 263 (describing the contours of the doctrine today).

5 With this long history firmly in mind, the court turns to the facts of this case,
6 which involve a maritime tragedy of an entirely different scope and scale than many of
7 those described above.

8 II. FACTUAL BACKGROUND

9 On New Year's Eve of 2011, in the early hours of the morning, the Bells' 45-foot
10 Bayliner motor cruiser caught fire. (Bell Decl. (Dkt. # 31) ¶ 6.) The Bells had owned the
11 vessel, called the SEA FOR TWO,⁶ since 1997. (*Id.* ¶ 2.) The Bells kept the SEA FOR
12 TWO moored at the Port of Edmonds, and had done so for over twenty years. (*Id.*) They
13 live less than two miles from the Port. (*Id.*) On December 31, 2011, the vessel was
14 moored at its usual slip at the Port of Edmonds when it suddenly "burst into flames" in
15 the wee hours of the morning. (Compl. at 2.) The fire consumed the SEA FOR TWO,
16 and eventually spread to the neighboring vessel, the GREAT S'CAPE. (*Id.*) Both the
17 SEA FOR TWO and the GREAT S'CAPE were completely destroyed, and as many as 22
18 other vessels suffered heat and smoke damage. (*Id.*) The fire was not detected until an
19 employee from neighboring restaurant Anthony's Homeport saw it and called 9-1-1

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21 ⁶ When the Bells purchased the boat, it was named GREAT SCOTT. (*See* Bell MSJ at
22 1.) The court declines to take judicial notice of the popularly-held belief that it is bad luck to
change a boat's name. *See, e.g., Mullane v. Chambers*, 206 F. Supp. 2d 105, 107 (D. Mass.
2002) ("As any sailor will tell you, it is bad luck to change the name of a boat . . .").

1 around 3:53 AM. (Conklin Decl. (Dkt. # 37) ¶ 5; Farnam Decl. (Dkt. # 41) Ex. A at 4.)

2 After the fire, the SEA FOR TWO sank and now has no value. (Compl. at 2, 3.)

3 There were no unusual circumstances surrounding the fire. Before the fire broke
4 out, it was a calm night with “no unusual activity.” (Conklin Decl. ¶ 2.) There was a
5 security guard on duty. (*Id.*) The weather was cold with a moderate wind, and the
6 breakwater was calm. (*Id.*) Mr. Bell had visited the boat the previous day for about 1.5
7 hours. (Bell Decl. ¶ 5.) He arrived on the boat at 11:30 AM, emptied the de-humidifier
8 into the galley sink, turned on his computer, and started downloading updates to the
9 computer’s software. (*Id.*) He started the vessel’s generator, but it “did not sound right,”
10 so he turned it off and called a marine contractor to set up an appointment to fix it. (*Id.*)
11 He performed several other acts of routine maintenance on the boat and checked to make
12 sure everything was as it should be. (*Id.*) It was. (*Id.*) He left around 1:00 PM, leaving
13 on a fluorescent lamp, the dehumidifier, the refrigerator, and two heaters as per his
14 ordinary practice. (*Id.*) Nothing seemed amiss. (*See id.*) At the time of the fire, the SEA
15 FOR TWO was locked and covered with a protective canvass. (Derrig Decl. (Dkt. # 35)
16 Ex. A at 9-10.)

17 The cause of the fire is unknown. Three different investigators inspected the fire,
18 and all of them reached this same conclusion. Investigator Paul Way concluded that “it is
19 not possible to offer an opinion as to the cause of the fire on the SEA FOR TWO to a
20 reasonable probability and none of the examining experts have done so.” (2d Way Decl.
21 (Dkt. # 46) ¶ 5.) Mr. Way determined that the fire most likely originated in the “forward
22 V-berth” of the SEA FOR TWO. (*Id.* ¶ 4.) He identified two possible causes of the fire:

1 the overhead lighting circuit in the V-berth and the heater in the V-berth. A second
2 investigator, Michael Fitz, concluded that “[b]ecause there are three possible causes in
3 the area of origin, the cause of the fire is undetermined at this time.” (Farnam Decl. Ex.
4 A ¶ 12.) Like Mr. Way, Mr. Fitz determined that the fire originated in the V-berth of the
5 SEA FOR TWO. (*Id.* ¶ 1.) He identified the overhead lighting circuit, the heater, and an
6 electric blanket as possible causes. (*Id.* ¶ 8-11.) Finally, a third investigator named John
7 Shouman concluded that “[a]t this time it is my opinion that the cause of this fire is
8 undetermined.” (Nicoll Decl. (Dkt. # 32) ¶¶ 1, 4.) Like the other investigators, Mr.
9 Shouman concluded that the fire most likely originated in the forward V-berth. (*See id.*)
10 No party has presented any evidence demonstrating that the cause of the fire is known at
11 this time.

12 Anticipating lawsuits related to the fire, the Bells filed this action for limitation of
13 liability pursuant to the Shipowners’ Limitation of Liability Act, 46 U.S.C. § 30505. (*See*
14 *Compl.*) The Bells ask the court to limit their liability to the value of the SEA FOR
15 TWO, which is zero. (*Id.*)

16 III. ANALYSIS

17 A. Two-Step Analysis Under the Limitation of Liability Act

18 Analyzing a petition for limitation of liability is a two-step process. *See In re*
19 *Anderson*, 847 F. Supp. 2d 1263, 1271 (W.D. Wash. 2012) (citing *In re BOWFIN M/V*,
20 339 F.3d 1137, 1137 (9th Cir. 2003) (per curiam)). Simply put, the Shipowners’
21 Limitation of Liability Act “limits shipowner liability arising from the unseaworthiness
22 of the shipowner’s vessel or the negligence of the vessel’s crew unless the condition of

1 unseaworthiness or the act of negligence was within the shipowner's 'privity or
2 knowledge.'" *Id.* Thus, the court must first determine whether liability even exists by
3 pinpointing what acts of negligence or conditions of unseaworthiness caused the accident.
4 *Id.* (citing *Hercules Carriers, Inc. v. Claimant State of Fla., Dept. of Transp.*, 768 F.2d
5 1558, 1563-64 (11th Cir. 1985)). At this first stage, the claimant bears the burden of
6 establishing that a negligent act or unseaworthy condition was the "causative agent" of
7 the alleged harm. *Id.* at 1271-72 (citing *Carr v. PMS Fishing Corp.*, 191 F.3d 1, 4 (1st
8 Cir. 1999)). If the claimant meets this burden, the burden shifts to the shipowner to
9 demonstrate a lack of knowledge or privity of the acts of negligence or conditions of
10 unseaworthiness that caused the accident. *Id.* (citing *Hercules*, 768 F.2d at 1564; *Carr*,
11 191 F.3d at 4). Here, the Bells have moved for summary judgment, asking the court to
12 declare that, as a matter of law, they are entitled to a limitation of liability.

13 **B. Standard on a Motion for Summary Judgement**

14 Summary judgment is appropriate if the evidence, when viewed in the light most
15 favorable to the non-moving party, demonstrates "that there is no genuine dispute as to
16 any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ.
17 P. 56(a); see *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Galen v. Cnty. of L.A.*,
18 477 F.3d 652, 658 (9th Cir. 2007). The moving party bears the initial burden of showing
19 there is no genuine issue of material fact and that he or she is entitled to prevail as a
20 matter of law. *Celotex*, 477 U.S. at 323. If the moving party meets his or her burden, the
21 non-moving party "must make a showing sufficient to establish a genuine dispute of
22 material fact regarding the existence of the essential elements of his case that he must

1 prove at trial.” *Galen*, 477 F.3d at 658. The court is “required to view the facts and draw
2 reasonable inferences in the light most favorable to the [non-moving] party.” *Scott v.*
3 *Harris*, 550 U.S. 372, 378 (2007).

4 **C. Step One: Liability**

5 Claimants attempt to meet their burden of proof at step one by demonstrating that
6 (1) the fire was caused by the Bells’ negligent acts and/or (2) the fire was caused by the
7 unseaworthy condition of the SEA FOR TWO. The court examines each assertion in
8 turn.

9 1. Liability for Negligence

10 Despite their best efforts, Claimants are unable to demonstrate that any negligent
11 acts by the Bells caused the fire on the SEA FOR TWO. Thus, they fail to meet their
12 burden of proof⁷ at step one with respect to negligence. *See Carr*, 191 F.3d at 4.

13 Claimants assert several alternative negligence theories, one for each possible
14 cause of the fire. (*See* Port MSJ; Ace Resp.) First, Claimants assert that if the cause of
15 the fire was the wiring of the overhead lighting in the V-berth, the Bells were negligent
16 because they hired questionable contractors to do the wiring. (Ace Resp. at 9.) Second,
17 they assert that if the cause of the fire was the heater in the V-berth, the Bells were
18 negligent because either they caused combustibles to fall onto the heater, or because they
19 did a faulty job of installing the wiring for the heater. (*Id.* at 7-8.)

20
21 ⁷ On summary judgment, the initial burden is on the moving party. However, since
22 Claimants have the burden of proof in the underlying action at this step, the Bells can show that
there are no genuine issues of material fact simply by showing there is no evidence to support a
negligence claim. *See Celotex*, 477 U.S. at 325.

1 The first of these theories does not pass muster. The theory is based on the fact
2 that, in 2001, the Bells hired several “senior Bayliner factory employees” to remodel the
3 inside of the SEA FOR TWO, including installing new overhead lighting in the V-berth.
4 (See Ace Resp. at 9; Bell Decl. ¶ 4; 2d Nicoll Decl. (Dkt. # 42-2) Ex. 2.) Claimants argue
5 that the Bells were negligent in allowing these Bayliner employees to install the wiring of
6 their overhead lighting because the Bayliner employees were “moonlighting” from their
7 ordinary jobs and because Mr. Bell does not remember if they were certified electricians
8 or not. (See Ace Resp. at 9.)

9 On the record currently before the court, there is nowhere close to enough
10 evidence for a reasonable jury to find that the Bells were negligent under this theory. See
11 *Galen*, 477 F.3d at 658. Claimants’ entire negligence case under this theory is based on
12 speculation. Claimants have seized on the fact that the Bayliner employees were
13 “moonlighting” from their ordinary jobs, but Claimants provide no evidence whatsoever
14 that the employees were unqualified to install the wiring, let alone that they actually
15 performed the wiring in a faulty manner, let alone that this allegedly faulty wiring (done
16 more than ten years ago) caused the fire. (See Ace Resp. at 9.) Any conclusion to that
17 effect would require speculating about the Bayliner employees’ qualifications and about
18 the type of work they performed, since Claimants have presented no evidence about
19 either of those things. (See *id.*) Speculation alone is not enough to defeat summary
20 judgment. See *Nelson v. Pima Community College*, 83 F.3d 1075, 1081-82 (9th Cir.
21 1996). A jury is not permitted to resort to speculation in reaching its verdict at trial, and
22 neither is the court on a summary judgment motion. *McSherry v. City of Long Beach*,

1 584 F.3d 1129, 1136, 1138 (9th Cir. 2009). Nor is it helpful to Claimants that Mr. Bell
2 cannot remember whether the Bayliner employees that performed the wiring were
3 certified electricians. (*See* Ace Resp. (“[The Bells] do not know the employees’ names,⁸
4 and do not know whether they were even electricians.”).) To approach a workable
5 negligence theory, Claimants would need to come forth with some evidence that the
6 Bayliner employees were in fact unqualified or performed faulty wiring. They have not
7 done so here. (*See* Ace Resp. at 9.)

8 The record contains only evidence to the contrary. The only non-speculative
9 evidence on this topic suggests that the employees who installed the lighting were, in
10 fact, qualified. To begin, the senior Bayliner factory employees were installing Bayliner-
11 brand overhead lights on a Bayliner boat—the same brand of boats they designed and
12 built at their jobs with Bayliner. (Bell Decl. ¶ 4; 2d Nicoll Decl. Ex. 2 at 14.) The Bells
13 also present evidence that the same Bayliner employees had previously performed
14 satisfactory work on other boats at the Port of Edmonds. (*Id.*; *id.* Ex. 1 at 5.) This
15 evidence includes testimony from the owner of the GREAT S’CAPE indicating that he
16 used the same Bayliner employees for other work and that they were “very
17 knowledgeable.” (*Id.* Ex. 1 at 5.) Moreover, there had been no indication prior to the fire
18 that the wiring might be faulty despite its having been installed more than ten years
19 before. (Bell Decl. ¶ 4.)

21 ⁸ It appears that Claimants are in possession of the Bayliner employees’ names at this
22 point (*see* 2d Nicoll Decl. Ex. 1 at 5), but there is no indication in the record that they deposed
them or otherwise obtained evidence of their qualifications.

1 Given the evidence before the court, summary judgment is appropriate with
2 respect to this negligence theory. No reasonable jury could find for Claimants on the
3 evidence now before the court, even construing the evidence in the light most favorable
4 to Claimants. *See Scott*, 550 U.S. at 378. The connection between Claimants' evidence
5 and a valid negligence claim is far too attenuated to defeat summary judgment.

6 As a result, Claimants' other alternative negligence theories fail as well. As part
7 of the step-one burden in a limitation of liability action, a claimant must show that any
8 negligent acts were the "causative agent" of the eventual harm. *Carr*, 191 F.3d at 4. This
9 is problematic here because every expert in the case has concluded that the cause of the
10 fire cannot be determined. (2d Way Decl. ¶ 5; Farnam Decl. Ex. A ¶ 12; Nicoll Decl.
11 ¶¶ 1, 4.) In light of this problem (and the attendant inference that no reasonable jury
12 could make a specific finding of causation), Claimants proceed under the theory that the
13 Bells may nevertheless be held liable because each of the different possible causes can be
14 attributed to the Bells' negligence. (*See Ace Resp.* at 7-11.) Indeed, where the cause of
15 an accident cannot be determined, a negligence plaintiff may instead show that all
16 possible causes are attributable to the defendant's negligence. *See, e.g., Glover v. BIC*
17 *Corp.*, 987 F.2d 1410, 1418-20 & n.2 (reversing trial court for failure to give similar
18 instruction); *Loura v. Adler*, 664 N.E.2d 1002, 1004 (where there is a multiplicity of
19 possible causes, some attributable to the defendant's negligence and others not, a plaintiff
20 who cannot produce positive evidence of causation can instead negate all possible causes
21 not attributable to negligence). However, as discussed above, one of the likely causes in
22 this case cannot (on the record before the court) be attributed to negligence. Specifically,

1 there is insufficient evidence that a negligent act by the Bells caused any alleged faulty
2 wiring of the V-berth lighting. In light of this, Claimants' one potential path forward⁹ is
3 no longer viable. Accordingly, Claimants' theory does not allow them to proceed, and
4 the Bells have demonstrated that they are entitled to judgment as a matter of law on this
5 issue. *Carr*, 191 F.3d at 4.

6 Separately, Plaintiffs assert a theory of negligence that rests on the fact that the
7 Bells did not install smoke detectors on the SEA FOR TWO. The court discusses this
8 claim separately below because, analytically, it is different from the rest of Claimants'
9 negligence theories.

10 2. Liability for Unseaworthiness

11 Next, Claimants argue that they have met their step-one burden by demonstrating
12 that an unseaworthy condition caused the fire on the SEA FOR TWO. Their argument is
13 based on the premise that a vessel that bursts into flames is unseaworthy as a matter of
14 law. (Port MSJ at 9-12.) This theory raises a handful of difficult issues. For simplicity,
15
16
17

18 ⁹ Claimants briefly discuss a theory of *res ipsa loquitur*, but that theory does not apply.
19 (See Ace Resp. at 11 (“[S]ince Petitioners raise the doctrine of *res ipsa* in their motion, it bears
20 mentioning here.”).) To proceed on a theory of *res ipsa loquitur*, the claimant must demonstrate
21 “(1) an injury-producing event of a kind that ordinarily does not occur in the absence of
22 someone’s negligence; (2) the event must be caused by an agency or instrumentality within the
exclusive control of the defendant; and (3) the event must not have been due to any voluntary
action or contribution on the part of the plaintiff.” *Ashland v. Ling-Temco-Vought, Inc.*, 711
F.2d 1431, 1437 (9th Cir. 1983). Claimants have failed to show that a fire on a boat is the kind
of accident that ordinarily does not occur in the absence of negligence.

1 the court will not address these issues because the case can be resolved by assuming
2 unseaworthiness and proceeding to step two of the limitation of liability analysis.¹⁰

3 **D. Step Two: Knowledge or Privity**

4 At step two, the burden shifts to the shipowner to demonstrate a lack of knowledge
5 or privity¹¹ of the acts of negligence or conditions of unseaworthiness that caused the
6 accident. *Anderson*, 847 F. Supp. 2d at 1271-72. ““This burden is not met by simply
7 proving a lack of actual knowledge, for privity and knowledge is established where the
8 means of obtaining knowledge exist, or where reasonable inspection would have led to
9 the requisite knowledge.”” *Id.* at 1271 (quoting *Hercules*, 768 F.2d at 1564).

10 The Bells have met this standard. As the Port points out, there are three plausible
11 causes of the fire: an electrical flaw in the heater, combustibles placed near the heater,
12 and the wiring of the overhead lighting. (Port MSJ at 14-15.) The Port effectively
13 concedes that the Bells can meet their burden with respect to the first two of these causes
14 and disputes only the third. (*Id.* at 15 (“Two down in the Bell’s [sic] favor and one to
15 go.”).)

16 The court finds that the Bells have met their summary judgment and step-two
17 burdens with respect to all three possible causes. The Bells have presented ample
18 evidence that they had no actual or constructive knowledge of any unseaworthy

19
20 ¹⁰ Because the SEA FOR TWO has no value at present, limitation under step two has the
21 same legal effect as exoneration under step one. If the parties disagree with this, they should
22 notify the court.

¹¹ Privity is not an issue in this case and neither party asserts it as an issue. The step-two
inquiry in this case relates exclusively to the Bells’ knowledge of fire-causing defects.

1 conditions on the SEA FOR TWO. The Bells present evidence that they took care of
2 their boat with “meticulous attention to detail,” and made regular visits to the boat to
3 inspect and maintain it. (Bell Decl. ¶ 2; *see also* Montgomery Decl. (Dkt. # 30) ¶ 12-13.)
4 Mr. Bell took “took vessel maintenance seriously, and followed the advice and
5 recommendations of hired service professionals.” (Montgomery Decl. ¶ 12.) When
6 service was needed, the Bells scheduled it. (*See, e.g.*, Bell Decl. ¶ 5 (noting that Mr. Bell
7 scheduled service for his generator the day before the accident immediately after learning
8 that it “did not sound right”).) Mr. Bell is an experienced boat owner who owned and
9 operated vessels for over 50 years and is a former Commodore of the Edmonds Yacht
10 Club. (*Id.*) The Bells were “conscientious vessel owners who exercised great care to
11 make sure the [SEA FOR TWO] was in top condition, clean, safe and
12 comfortable . . . [they] were proud of [their] boat.” (Bell Decl. ¶ 8.) The Bells present
13 evidence that they “displayed a very high degree of pride in ownership, showing a deep
14 commitment to intrinsic vessel recreational, character, and aesthetic values. The vessel
15 was central to their married and social life” (Montgomery Decl. ¶ 13.)

16 The Bells regularly had the SEA FOR TWO inspected for seaworthiness and to
17 determine if there were any hazards, deficiencies, or deteriorations. (Montgomery Decl.
18 ¶¶ 10-11.) The most recent such inspection was in 2007. (*Id.* ¶ 11.) At the conclusion of
19 that inspection, the inspector concluded that the vessel was in “above-average condition
20 for vessels of similar age and use, and that it would perform its intended services
21 satisfactorily.” (*Id.*) The report contained only one recommendation on electrical issues,
22 and Mr. Bell followed that recommendation. (*Id.*)

1 With respect to the wiring of the overhead lighting, the Bells had no knowledge of
2 any defects. First, the record is clear that they did not have actual knowledge of any
3 problems: as Mr. Bell testified, “Gerri and I were unaware of any problems with the
4 wiring.” (Bell Decl. ¶ 6.) Neither of the Bells were present when the wiring was
5 installed. (*Id.* ¶ 4.) Nor is there any evidentiary basis for charging the Bells with
6 constructive knowledge of the alleged wiring defects. The Bells “never had a problem
7 with the lighting in the V berth—the switches always worked and we never noticed,
8 either by smell or by touch, that there was any heating going on behind the ceiling.” (*Id.*
9 ¶ 4.) Mr. Bell testifies that he “had no reason to believe that any of the wall switches
10 were faulty.” (*Id.* ¶ 6.) Moreover, the Bells took extremely good care of their vessel, as
11 shown by the evidence discussed above. In short, all of the evidence in the record
12 suggests that reasonable inspection would not have led to knowledge of any wiring
13 defects and the Bells did not fail to employ any reasonable means of obtaining knowledge
14 about any problems. *See Anderson*, 847 F. Supp. 2d at 1271.

15 Claimants have presented virtually nothing to contradict this evidence. Claimants’
16 only argument against summary judgment relates to the wiring of the overhead lighting.
17 The Port argues that the Bells must be charged with constructive knowledge of any
18 wiring flaws because they were negligent in hiring unqualified, “moonlighting” workers
19 to perform the wiring. (Port MSJ at 15-16.) But the court has already rejected this
20 “moonlighting” theory because it requires far more speculation than the court is permitted
21 to indulge at the summary judgment stage. *See Nelson*, 83 F.3d at 1081-82; *McSherry*,

1 584 F.3d at 1136, 1138. The same theory fails for the same reasons in this context: it is
2 not appropriate on summary judgment to charge the Bells with knowledge of an allegedly
3 unseaworthy condition under a theory grounded not on facts but on pure speculation. *See*
4 *Nelson*, 83 F.3d at 1081-82.

5 In light of the Bells' evidence and Claimants lack of evidence, the court concludes
6 that no reasonable jury confronted with the evidence now before the court could conclude
7 that the Bells had knowledge (actual or constructive) of any unseaworthy condition of the
8 SEA FOR TWO. As such, they are entitled to summary judgment with respect to
9 limitation of liability.¹²

10 **E. Negligence Claim Based on Failure to Install Smoke Detectors**

11 Last, the court addresses Claimants' theory that the Bells were negligent because
12 they failed to install smoke detectors on the SEA FOR TWO. As that theory goes, the
13 Bells were negligent because they did not install smoke detectors in their boat, and their
14 negligence resulted in the fire being detected much later than it would have been
15 otherwise, thereby causing damages. (*See Ace Resp.* at 9-11.) This theory does not fit
16 into the analytical framework described above because it does not follow the same causal
17 pattern as Claimants' other theories of negligence.

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20 ¹² Claimants present a cursory argument that the Limitation of Liability Act does not
21 apply here because of the so-called "personal contracts" exception to the Act. (*See Port MSJ* at
22 12-13.) That exception does not apply here because the Bells' alleged liability is not based on
contract even if they did agree by contract to keep their vessel seaworthy. This is not a breach of
contract action.

1 There are genuine issues of material fact with respect to this theory of negligence.
2 There is no question that the SEA FOR TWO did not have smoke detectors. (*See* Bell
3 MSJ at 10 (“There were no smoke detectors on the vessel . . .”).) However, the parties
4 dispute whether it was negligent not to install smoke detectors or, to be more specific,
5 whether a reasonable person would have installed smoke detectors. The Bells present
6 evidence that the Port of Edmonds’ rules do not require smoke detectors on vessels like
7 the SEA FOR TWO, nor does any applicable law, rule, or regulation. (Bell Resp. at 28-
8 29; Bell MSJ at 10.) On the other hand, a rule or regulation requiring a specific mode of
9 conduct is not a prerequisite to a claim for negligence, and Claimants present evidence
10 that other people in the marina with similar vessels did install smoke detectors, including
11 the owners of the GREAT S’CAPE. (Ace Resp. at 10-11.) Claimants also present
12 evidence that Mr. Bell claims he would have installed a smoke detector if a surveyor had
13 suggested he do so, and evidence that a surveyor actually did suggest he do so. (*See id.* at
14 10.) In other words, the evidence on the question of reasonable care is equivocal. It is
15 ordinarily a question for the jury whether a defendant has exercised reasonable care, *see*,
16 *e.g., Ghotra by Ghotra v. Bandila Shipping, Inc.*, 113 F.3d 1050, 1060 (9th Cir. 1997);
17 *Martinez v. Korea Shipping Corp., Ltd.*, 903 F.2d 606, 610 n.3, 611-12 (9th Cir. 1990),
18 and this case is no exception.

19 The parties also dispute the question of causation—i.e., whether smoke detectors
20 would have made any difference. The Bells present evidence that the kind of smoke
21 alarms they would have installed would not have been heard by anyone outside the SEA
22 FOR TWO. (*See* Bell Resp. at 28-29.) In this regard, they point out that the GREAT

1 S'CAPE was equipped with smoke detectors, and nobody heard them prior to the time
2 that the fire was spotted visually from Anthony's restaurant and reported to the
3 authorities. (*Id.*) On the other hand, Claimants present expert testimony that the lack of
4 smoke detectors played a role in the spread of the fire. (Farnam Decl. Ex. A ¶ 5.)
5 Further, they present testimony that there were people sleeping approximately 60 feet
6 away from the fire who could potentially have heard an alarm. (Ace Resp. at 10.) More
7 notably, they present testimony from the Port of Edmonds Operations Supervisor that
8 alarms from boats can be heard "all around the marina" at nighttime, even when installed
9 on the inside of a boat. (Danberg Decl. (Dkt. # 36) ¶ 3.) Again, the evidence on this
10 issue is too equivocal to justify granting summary judgment.

11 Given these two material factual disputes, summary judgment is inappropriate
12 with respect to Claimants' negligence claim premised on failure to install smoke
13 detectors in the SEA FOR TWO.¹³

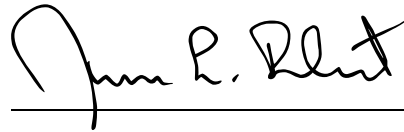
14 IV. CONCLUSION

15 Based on the foregoing, the court GRANTS IN PART and DENIES IN PART the
16 Bells' motion for summary judgment (Dkt. # 28) as described above and DENIES the
17 Port's cross-motion for summary judgment (Dkt. # 34). The only claims remaining in
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20 ¹³ There is also no question that the Bells knew they did not have smoke detectors in the
21 SEA FOR TWO. (*See* Bell MSJ at 10.) Thus, there is no basis for limiting liability under this
22 theory pursuant to step two of the limitation of liability analysis. *See Anderson*, 847 F. Supp. 2d
at 1271-72.

1 this case are a post-fire contractual claim and Claimants' theory of negligence based on
2 failure to install smoke detectors in the SEA FOR TWO.

3 Dated this 13th day of January, 2014.

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7 JAMES L. ROBART
8 United States District Judge
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